

Criminal Justice in America

Contributed by Howard Unger
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The United States has the world's highest incarceration rate, with one in 32 adults currently or previously behind bars. Is it a failure of the system or a failure of society? U.S. lawmakers are rethinking policies on both.

When a judge hands down a prison sentence, it's the criminal who's supposed to "get the message." However, as more sentences have been handed down throughout the United States, oftentimes by judges bound by mandatory sentencing laws, it's lawmakers who are finally getting the message: It's not about prisons or mandatory sentences anymore, it's about principles.

In capitol domes throughout the country this year, lawmakers, in what has become a trend in recent years, will be dealing with how to handle their states' growing prison populations. But unlike in years past, many legislators—both Democrats and Republicans—won't be lining up to build more prisons or increase sentences. They will be talking about issues like rehabilitation and deterrence because the issue is beginning to boil over. At the end of 2005, one in every 108 men in America was behind bars, according to the Department of Justice, giving the United States the highest incarceration rate in the world—more than 20% higher than Russia, the world's second-most frequent jailer.

In many states, debates on how to deal with growing prison populations are reshaping the way many legislators are approaching criminal justice.

"We can't pander to people's worst fears, which is one of the reasons we have mandatory minimums in the first place," says Rep. Michael E. Festa (D), a former prosecutor who has served in the Massachusetts House of Representatives since 1999.

Massachusetts: More dollars for prisons than higher education

"A lot of mandatory sentencing laws were put in place in the late 1980s and, in retrospect, there have been unintended consequences," Festa says. Among them, he notes, is that 70% of Massachusetts prisons are filled with non-violent felons and that his state, known for its higher learning institutes, now spends more on prisons than it does on higher education.

"When I was a prosecutor, if some kid—not a dealer—were caught passing a joint outside a school, and he came before me with no record, I would never have recommended that he spend two years in the House of Corrections," Festa says. Now, he says, prosecutors would be forced to seek a two-year sentence, something most district attorneys recognize as a "harsh, draconian result" of the state's sentencing laws.

Festa says Massachusetts lawmakers are now realizing that all criminals should not be treated the same. "If some drug defendants are dealers and some are sick people, and you do

not have a justice system that distinguishes between the two, you will have problems," he says.

It's a problem being faced in a part of the country that doesn't often draw comparisons to Massachusetts.

Texas style justice

In the Lone Star State, where justice usually means long prison sentences, one lawmaker is leading a movement to rethink the state's approach to non-violent offenders. While the governor's office wants the state to add 5,000 prison

beds over the next four years, State Senator John Whitmire (D) wants the state to lessen the strain on its overcrowded prisons by funding education and treatment programs for non-violent offenders. Violent felons, however, would get no such compassion.

"In Texas, individuals have had personal experience with substance abuse problems or they know or work with people who have had problems. They know that these are good people who need help and can turn their lives around," Whitmire says. The problem, however, is convincing colleagues that imprisoning young, non-violent drug offenders will ultimately lead to more strain on the state's justice system. "We're tough on violent offenders in Texas. We've got to get smart on non-violent offenders," he says.

To convince fellow senators that "Texas-style justice" can include rehabilitation and drug-treatment programs, Whitmire says he is trying to educate lawmakers about alternatives to long-term imprisonment. However, he says, it's often an uphill climb. "You need to know the difference between violent and non-violent offenders, and most members don't do that. With a broad brush, they want to lock everybody up," says Whitmire.

One lawmaker who understands the issue is pushing similar reform in the Texas House of Representatives—Rep. Jerry Madden (R), a tough-on-crime conservative who chairs the House Corrections Committee.

Says Madden of the duo's attempt to not give into calls from their governor's office for more prison-building, "It's smart public policy." Madden says he looks at the issue confronting Texas not just as an economic problem, but a moral one, as well. He says his plan to add more diversionary programs throughout the state is, in the long term, less expensive for taxpayers and a more compassionate policy than locking up more non-violent offenders. In addition, he says, it will also make Texas safer for its citizens.

"In our state, seven percent of the male population is locked up, on parole, or on probation, and of those in prison, only about one-third are violent offenders" says Madden. The rise in the number of prison inmates, he says, is growing at six times the state's population growth, an indication that building more prisons is not the best solution. "People have recognized that the alternative to diversionary programs is to keep building prisons forever," says Madden. Rehabilitating, Succeeding

"This is not Texas, but we're tough," says Sen. Denton Darrington (R), chairman of the Idaho State Senate Judiciary and Rules Committee. Also faced with prison overcrowding issues this legislative session, Darrington says Idaho must also deal with the causes of why more of its citizens are committing crimes.

In Idaho, he says, the need for more prison beds can be explained in one word—methamphetamine. "It's the most highly addictive, brain-altering drug that's ever come onto the scene," says Darrington. "Meth destroys families, results frequently in suicides, domestic violence, and the committing of crimes."

To keep methamphetamines from destroying more lives, Darrington says, Idaho must develop more deterrents, like drug courts and rehabilitation programs. Nevertheless, he says, his constituents can still expect judges to hand down long, hard sentences. That is why he calls the state's Unified Sentencing Act "the cornerstone of our criminal justice code."

The Act, which Darrington helped author, eliminated prisoners' right to have their sentences reduced for good behavior and created mandatory minimum sentences for violent crimes. Now, the legislator says, if Idaho releases a prisoner early, it's because the state's five-member parole board believes the prisoner has been rehabilitated.

Success is in the numbers, Darrington says. Although Idaho is imprisoning more people, recidivism rates are among the lowest in the country, at around 33%. Meanwhile, the state's rate for granting parole is one of the highest in the nation, at about 65%. The reason for the success, Darrington explains, is that the parole board takes into account what an inmate has done in prison, like enrolling in a drug rehabilitation program or a high school diploma equivalency course, while also reviewing what the inmate will do if released early. Asks Darrington, "What will the inmate do once outside of prison? How is their family life? Do they have a support system?"

Idaho will probably not be the only state to deal with the effects of meth's explosion in the heartland. In 2005, prison

populations skyrocketed in Kentucky (up 10%), Montana (up 11%), and South Dakota (up 12%) from the previous year, according to a recent Department of Justice report.

In Washington State, though, the most pressing criminal justice issue in 2007 will be how lawmakers reduce the number of illegal firearms, says Sen. Adam Kline (D), who chairs the senate's Judiciary Committee. Backed by what he calls a mandate from voters this past Election Day, Kline says his state is ready to fight crime before it happens, and not by tacking years onto prison sentences.

"A lot of 'tough on crime' bills are tough after a crime happens," Kline says. For a rational person who may be thinking about committing a crime, a review of the state code may change that person's mind, he says, but most criminals have no idea what's in Washington's state code. If the state wants to keep guns out of criminals' hands, he says, the state needs to better regulate licensed gun dealers, a concept that lends itself to a variety of crime-fighting issues. "We need to rethink jacking up sentences to deter crime," Kline says.

As for convicted felons, Kline says Washington is finally warming up to the idea that, in the long run, rehabilitation costs less than incarceration. During the 1980s, he says, Washington limited the amount of money it paid to inmates seeking college degrees, a decision that countered what most experts say is a way to reduce crime.

During that same era, he says, legislators took away television sets and weight rooms because their idea was that prison functioned as a punishment - not as a form of rehabilitation. Only recently, he says, have lawmakers come around to the idea that prison-building is not the solution to the state's crime problem.

"I've seen a sea change," Kline says. "We're going back to rehabilitation, which ultimately leads to prevention."

Although laws have grown more complex, the underlying principles of American criminal justice have generally remained constant, says Gerald Leonard, a professor at Boston University School of Law who says that the system was founded upon deterrence, punishment and rehabilitation.

"There is a tendency to say that criminal law is about punishing people as people deserve to be punished after a criminal act. However, the history of justice says that there has been a variety of reasons," says Leonard, who has written extensively on American legal history. "I don't think there's ever been a time where the idea of preventing crime — deterring crime — has fully taken a back seat to giving people what they deserve."

Nevertheless, Leonard says, law-making has long been influenced by passion and politics.

"Reactions to sensationalized crimes have always had a certain similarity over time. People hear about some horrific crime, so they think that something ought to be done about it without thinking about how it should be done," he explains. As a result, politicians have enacted mountains of statutes that often overlap one another. Of course, state legislatures have not always had the "legislative machinery" that they do today, allowing them to produce even more statutes. Says Leonard, "The politics of crime in legislatures is not a very rational process; it's a knee-jerk process."

If states want to prevent crime, says University of Michigan economist Justin McCrary, they need to examine policies that work and not just increase criminal justice budgets. One policy that doesn't work, he points out, is in Florida, where the increased likelihood that an 18-year-old will be imprisoned has done little to change the behavior of 17-year-olds. McCrary, in a 2005 study co-written with Columbia economist David Lee, found that incarceration was hardly a deterrent for these Sunshine State teenagers, even though the chance of their being sent to prison increased more than five times—from 3% to 17%—once they hit their 18th birthday.

Even a conservative member of the country's highest court has spoken up in favor of reforming the way state's deal with criminals. Supreme Court Justice Anthony M. Kennedy, a man appointed to the Court by President Ronald Reagan, told a gathering of the American Bar Association in 2003, "The focus of the legal profession, perhaps even the obsessive

focus, has been on the process for determining guilt or innocence… When the prisoner is taken way, our attention turns to the next case. When the door is locked against the prisoner, we do not think about what is behind it."

"We have a greater responsibility," Kennedy said. "As a profession, and as a people, we should know what happens after the prisoner is taken away. To be sure the prisoner has violated the social contract; to be sure he must be punished to vindicate the law, to acknowledge the suffering of the victim, and to deter future crimes."

Throughout the country, lawmakers, it appears, seem to be getting the message.